Montana Department of Revenue

Dan Bucks
Director

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SENATE TAXATION
EXHIBIT NO. 6
DATE 2.10.09
BILL NO. SB280

February 6, 2009

To: Senator Gebhardt RWW

From: Randy Wilke, Administrator
Property Assessment Division

Re: Request for information on personal property taxation

You requested information regarding Senate Bill 280. Specifically what determines if personal property is considered strict personal property or if it is liened to real property, how the taxation of the two differs, and what percentage of the taxable value in Senate Bill 280 was attributed to each.

First, the Senate Bill 280 fiscal note identifies the value of leased and rental property that is addressed by the bill – that is $234,030. Approximately 89% of that value is personal property that is considered as strict personal property; the remainder - 11% - is attributed to personal property liened to real property.

The statutory definition of personal property is:
"The term personal property includes everything that is the subject of ownership but that is not included within the meaning of the terms "real estate" and "improvements" and "intangible personal property" as that term is defined in 15-6-218, MCA."

Personal property can then be classified as strict personal property or personal property liened to real property.

Strict Personal Property (not Liened to Real)

Strict personal property is defined as personal property that is assessed and billed separately from any real property, land and/or buildings for property tax purposes.

This type of assessment is made if there is no real property in the same ownership as the personal property, or the taxpayer requests that the personal property be assessed separately, or a lienholder requests the personal property be separately assessed. This is further discussed under the personal property liened to real property section.

The assessment notice is mailed to taxpayers for strict personal property typically in April of each year. The notice identifies the value that has been assigned to the personal property. The notice indicates that if the taxpayer has any questions or disagrees with the values they have 30 days to notify the department.

The tax billing on strict personal property does not have a statutory mailing date requirement. Generally the County Treasurer creates and mails the strict personal property tax bills after the assessment information is received from the department. Tax billing generally occurs in the May – June timeframe each year, and are due and payable in one payment within 30 days of receipt of the bill. (15-16-119 MCA) If payment is not received within that 30 day time period, they become delinquent.

The county treasurer may take either of these courses of action to collect the delinquent taxes:

- The tax on personal property may be collected and payment enforced by the seizure and sale of the personal property against which the tax is assessed or any personal property in the possession of the person assessed.
    - The county commission, in its discretion, may cancel any personal property taxes, including penalty, interest, costs, and charges that remain unsatisfied after the property upon which the taxes were assessed had been seized and sold. 15-17-911 MCA

- The treasurer shall provide a list of delinquent personal property taxpayers and the taxes due to the board of county commissioners. The board may order the treasurer to send a copy of the list to the department of administration for collection under Title 17, chapter 4, part 1. (15-16-119(7) MCA)

Personal Property Liened to Real

Personal property liened to real is defined as personal property that is assessed and billed with the real property, land and/or buildings for property tax purposes.

This type of assessment is made if the real property and personal property are in common ownership, and it can be made at the request of the taxpayer, provided the taxpayer owns real property.

The assessment notice is typically mailed to taxpayers for personal property liened to real in June of each year. The notice identifies the value that has been assigned to the personal property, and the real property. The notice indicates that if the taxpayer has any questions or disagrees with the values they have 30 days to contact the department.

Personal property taxes create a prior lien against the personal property. They also create a lien on the real property of the owner. The taxes on personal property with a taxable value up to and including $10,000 are a first and prior lien on the real property of the owner of the personal property, unless the lien holder on record files a notice each year with the treasurer and the department.

When the owner of the real property and personal property liened to real property has failed to pay taxes due on the real property and personal property for 1 or more years, a holder of a mortgage on the real property (upon which personal property taxes are a lien under this section) may file a written request with the department to have the personal property and real property of the owner separately assessed. The request must be made by certified mail at least 10 days prior to January 1 in the year for which the property is assessed. (15-16-402, MCA)

Tax billing typically takes place in October with the tax bills due in two halves. The property tax bill would include the taxes for any and all real property along with the personal property. The first half payment is due on or before November 30 or within 30 days of tax billing, the second half is due on or before the following May 31. If the taxes are not paid by the due date, they become delinquent. Penalty is assessed and interest begins to accrue from the first day of delinquency. (15-16-102 MCA.)

After properly posting a public notification of the property tax delinquency, the Treasurer can proceed under a tax lien sale. After the tax lien sale, the county treasurer shall issue a tax lien sale certificate to the purchaser. The person to whom the taxes were originally assessed must be notified of the tax lien sale. (15-17-212 MCA) If no one purchases the property at the tax lien sale, the county is considered to be the purchaser.

When a person wants to take an assignment on a tax lien on delinquent property, they must provide notification to the person to whom the property was originally assessed by certified mail at least 2 weeks prior to making the payment of delinquent taxes. Any person, who shows proof of mailing a notice of their intentions to the person to whom the taxes were assessed, can pay the taxes and other charges and receive an assignment certificate for the property. (15-17-323 MCA)

The owner of property for which a tax lien deed or assignment certificate has been issued has 36 months in which to redeem the property. (15-18-111 MCA)

I hope this has provided you with the information you requested. Please feel free to contact me if you have any further questions.